

**Board of Forestry and Fire Protection**

**INITIAL STATEMENT OF REASONS**

**“REGISTERED PROFESSIONAL FORESTER AND CERTIFIED SPECIALTY  
AMENDMENTS, 2018”**

**Title 14 of the California Code of Regulations (14 CCR),**

**Division 1.5, Chapter 10:**

**Article 1, 2, 3, 4**

**Amend: § 1600-1647 et. seq., 1650, 1651**

**Adopt: § 1607 (d), 1651 (d)**

**INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE  
REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION  
IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY  
(pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC §  
11346.2(b)(1))**

The Professional Foresters Law (PRC § 750, *et seq.*) declares the existence of a public interest in the management and treatment of the forest resources and timberlands of the state. Pursuant to PRC § 759, the Board of Forestry and Fire Protection (Board) is authorized to adopt rules and regulations to effect the provisions of the article (the Professional Foresters Law), including the regulation of persons who practice the profession of forestry and whose activities have an impact upon the ecology of forested landscapes and the quality of the forest environment (PRC § 751).

PRC § 772 provides for a certified specialty where “Instead of being registered as a professional forester, an applicant may request to be registered as a certified specialist in one or more fields of forestry” where “Any public agency or professional society may submit for board recognition its independent certification program as full qualification without examination for the board’s certificate of specialization. That certification as a specialist shall be granted provided the board determines the program fully protects the public interest in that area of practice encompassed by the program. Those certificants are subject to board registration and discipline with review by that specialty”.

The proposed action was developed in response to petition for administrative rulemaking (pursuant to Government Code § 11340.6) resulting from a disciplinary case involving a Certified Rangeland Manager (CRM) specialty. Within the petition, the petitioner made several requests to the Board for the adoption of regulations related to professional standards and the CRM certified specialty, which Board responded to with a scheduled public hearing pursuant to Gov Code § 11340.7 (a). The petitioner also made several requests to the Board which were unrelated to regulations, or were unclear in their content, and which were denied by the Board. At the public hearing, which occurred on December 5, 2017, the Board considered the petition to adopt

regulations, but chose not to make any regulatory changes at the time and referred the materials to the Professional Forester's Examining Committee (PFEC) for further review, requesting input back to the Board on the matter. The **problem** is that during review of the portions of the petition approved for analysis by the Board, several questions posed by the PFEC and interested stakeholders, regarding discipline for the Specialty Certificate program, revealed unclear rule language and omissions in the regulatory text that will require changes to clarify the oversight of Certified Specialties and how disciplinary issues are handled by the Professional Society sponsoring the certified program and by the PFEC. Board staff went about addressing this issue by examining the rulemaking documents for the 1994 Certified Rangeland Manager Specialty, case law, relevant authorizing statutes, and rulings related to professional licensing in California.

Board staff recommendations include:

- 1) Amend 14 CCR § 1600 – 1620 to add “certified specialist” to those sections where the term was omitted to clarify that the disciplinary regulations apply to both RPF and CRM.
- 2) Adopt 14 CCR § 1607 (d) to require a certified specialist to provide evidence of good standing within the applicable professional society or public agency specialty program as part of the renewal requirement.
- 3) Adopt 1611.5 to inform RPFs and CRMs of professional responsibilities and standards, and potential related liability, in addition to the responsibilities and standards under the licensing authority and programs of the Board.
- 4) Amend 14 CCR § 1650 to clarify that this section applies to all specialty programs, not just CRM.
- 5) Amend 14 CCR § 1650 (b) and (c) to align the section more clearly with its referenced statute, PRC 772.
- 6) Amend section 14 CCR § 1650 (c)(2) to ensure that the professional society sponsoring a specialty must inform the PFEC of any discipline or complaints they receive. It also makes clear that the professional society may have its own disciplinary process but does not require it. It makes clear that the Board's disciplinary process applies after the Board grants the specialty certificate, not during the application and examination process which is the professional society's responsibility. It also clarifies that the Board may rescind the certificate of an applicant for a specialty certificate if they were found to have committed fraud or deceit in their application to the professional society.
- 7) Amend 14 CCR § 1650 (c)(3) to provide that significant changes must be approved by the Board.
- 8) Amend 14 CCR § 1650 (d) to make clear that the professional society may charge its own fees, which are separate from the fees payable to the Board under regulation.
- 9) Adopt 14 CCR § 1650 (e) to make clear and implement the requirement of PRC § 772 that the applicant must meet the requirements under the program before the Board grants the certificate and to make clear that approval constitutes “full qualification without examination” by the Board. It also makes clear the issuance

of the specialty certificate is not discretionary as the statute in PRC § 772 states the Board “shall” grant the certificate.

- 10) Adopt 14 CCR § 1650 (f) which includes language that makes clear the Board may rescind or terminate its recognition of an approved program in certain circumstances.
- 11) Amend 14 CCR § 1651 (a) to clarify that the CRM program is for range resources on “forested landscapes”.
- 12) Amend 14 CCR § 1651 (b) to correct a typographical error.
- 13) Amend 14 CCR § 1651 (c) to clarify the requirements for granting the specialty certificate by the Board.
- 14) Adopt 14 CCR § 1651 (d) which revises language previously in 14 CCR § 1651 (c) to clarify the effectiveness of the existing CRM specialty program recognized by the Board.

**SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY’S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.***

The Board is proposing action to amend 14 CCR § 1600 *et. seq.* and adopt new section 14 CCR § 1607 9d), 1611.5, 1650 (e), 1650 (f) and 1651 (d).

The **purpose** of the proposed action is to provide clarity in the disciplinary process and professional standards and responsibilities for Registered Professional Foresters (RPF), the Certified Rangeland Manager (CRM) specialty and any future specialties that may be approved by the Board for a private society or public agency.

The **effect** of the proposed action is an efficiently facilitated disciplinary process for Registered Professional Foresters and Certified Rangeland Managers and clearly defined rolls for the professional society and the PFEC in this process.

The **benefit** of the proposed action is to improve the functioning of the disciplinary process for RPFs and CRMs and clearly define the organizational framework for any future certified specialty. The regulations will also benefit the promotion of fairness and equity through a clearly defined, efficient, and improved professional disciplinary process.

### **Aggregated Explanation**

The proposed amendments to sections 1600-1620 do the following:

- Clarify regulation by inserting “certified specialist” “certified specialty” or “certificant” where appropriate.

The proposed adoption of 1607 (d) does the following:

- require a certified specialist to provide evidence of good standing within the applicable professional society or public agency specialty program.

The proposed amendments to section 1650 do the following:

- Clarify the regulation and structure of the Specialty Certificate including discipline, applications, qualifications, examination, modifications and termination of a program.

The proposed amendments to section 1651 do the following:

- Clarifies that the Certified Rangeland Manager program applies to range resources on “forested landscapes”.
- Clarifies the requirements for granting the specialty certificate by the Board.

The proposed adoption of new section 1651 (d) does the following:

Clarifies the effectiveness of the existing CRM specialty program.

#### **Amend 14 CCR § 1612, 1612.1, 1612.2, 1613, and 1614**

To add “certified specialist” to those sections where the term was omitted to clarify that the discipline regulations apply to both RPFs and CRMs.

#### **Amend § 1607 (d)**

To include language to require a certified specialist to provide evidence at license renewal of good standing within the applicable professional society of public agency specialty program. This is necessary to clarify a professional standard required for certified specialist license renewal.

#### **Amend § 1610 (a)**

Clarified that the duties delegated within the provision are delegated to the Board’s executive officer. Given that § 1600 defines “executive officer” as the executive officer of Foresters Licensing, this distinction was necessary to avoid confusion.

**Adopt § 1611.5** To inform RPFs and CRMs of professional responsibilities and standards, and potential related liability, in addition to the responsibilities and standards under the licensing authority and programs of the Board.

#### **Amend §1650**

To clarify that this section applies to all specialty programs, not just CRM.

#### **Amend § 1650 (b) and (c)**

To align the section with the requirements, language, and intent of its referenced statute, PRC § 772, to improve clarity. Additionally, clarified that paragraphs 1 through 4 are requirements of an independent certification program submitted to the Board by a professional society or public agency.

#### **Amend § 1650 (c)(1)**

Included language to reflect amendments to § 1650 (c)(2), which requires that the

professional society or public agency inform the PFEC of allegations of violations or misconduct received by the professional society or public agency.

**Amend section § 1650 (c)(2)**

To ensure that the professional society sponsoring a specialty must inform the PFEC of any disciplinary action or complaints they receive in order to maintain Board oversight of, ensure compliance with, and improve enforcement of the Board's disciplinary processes and professional standards requirements. It also makes clear that the professional society may have its own disciplinary process but does not require it. It makes clear the Board's disciplinary process applies after the Board grants the specialty certificate, not during the application and examination process which is the professional society's responsibility. It also clarifies that the Board could rescind the certificate of an applicant for a specialty certificate if they were found to have committed fraud or deceit in their application to the professional society.

**Amend § 1650 (c)(3)**

To provide that all changes to the program must be approved by the PFEC and that significant changes must be approved by the Board.

**Amend § 1650 (c)(4)**

Clarified that the report required by the paragraph is to be submitted to the executive officer of the PFEC rather than the PFEC itself, in order to... Additionally, eliminated unnecessary language regarding actions that may result from a failure to submit the report as described. The language is unnecessary and difficult to enforce, and its removal improves clarity of the provision.

**Amend § 1650 (d)**

To make clear that the professional society may charge its own fees, which are separate from the fees payable to the Board under regulation.

**Amend § 1650 (e)**

To clarify that the applicant must meet the requirements under the program before the Board grants the certificate and to make clear that approval constitutes "full qualification without examination" by the Board. It also makes clear the issuance of the specialty certificate is not discretionary, as PRC § 772 states the Board "shall" grant the certificate. Additionally, the terms of the program are to be made available to the public by both the professional society or public agency and the Board (via its website). This availability will aid the public in their understanding and implementation of the requirements of the certified program.

**Amend § 1650 (f)**

Inserts language that makes clear the Board may rescind or terminate an approved program in certain circumstances.

**Amend § 1651 (a)**

To clarify that the CRM program is for range resources on “forested landscapes” which is consistent with this Article of the Public Resources Code and to clarify that these regulations are not in conflict with any other regulatory schemes which may exist outside of the Board’s authority.

**Amend § 1651 (c)**

To clarify and make explicit the requirements for granting the specialty certificate by the Board. These are necessary for interpretation and implementation of the regulations by any professional society or public agency. Removed the provision which solely recognized the identified CA SRM program as the qualification for becoming a certified rangeland manager.

**Amend § 1651 (d)**

To state that the Board recognizes the independent certification program submitted by CalPac-SRM pursuant to its “Program for Certification of Professional Rangeland Managers” (PCPRM) dated June 5, 1992 and amended on November 4, 1993. This is necessary to disclose the availability and validity of the certification program to the public.

**Non-Substantive Amendments**

**Amend § 1605 (a):** Change “rules of the Board”, to “Board Rules” to maintain consistency and clarity with other Board regulations.

**Amend § 1600 and 1601**

Used the complete name of the State Board of Forestry and Fire Protection where it is referred to in full.

**Amend § 1651 (b)**

Changed “a RPF” to “an RPF” to improve grammar.

**ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))**

The effect of the proposed action is the following:

- The clarifying amendments and the adoption of new clarifying language will have no economic impact.

There will be no effect on the creation or elimination of jobs by the proposed action.

**Summary**

The proposed action:

- (A) will not create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will not create new businesses,
- (B) will not eliminate existing businesses within California
- (C) will not affect the expansion or contraction of businesses currently doing business within California.

(D) will yield nonmonetary benefits. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the “Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address”.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))**

The Board of Forestry and Fire Protection relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action:

1. State of California Public Resources Code (PRC) §§ 750-783
2. State of California Code of Regulations Title 14 (14 CCR) §§ 1600-1651

**REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD’S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):**

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

Pursuant to **GOV § 11346.2(b)(4)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**Alternative 1: No Action Alternative**

The Board considered taking no action, but the no action alternative was rejected because it would not address the problem.

**Alternative #2: Make Existing Regulation Less Prescriptive**

This action could include greatly simplifying the Registration of Professional Foresters Rules, Title 14, California Code of Regulations, Chapter 10 and create one standard regulatory section for all Registered Professional Foresters and Specialty Certificates. This alternative was rejected because the existing statutory requirements for the registration of professional foresters and certified specialists are too disparate for unification. Statute does not allow for a public agency or professional society to submit

an independent certification program for professional foresters, but this is the basis of the certified specialist program.

### **Alternative #3: Proposed Action**

Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action.

Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, having less than 100 employees, and not dominant in their field of operations.

There are no other viable alternatives. Without regulatory changes, the existing inconsistent regulatory language will add more confusion to the process to the certification and discipline of specialty certificants.

### **Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):**

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The proposed action does not introduce additional prescriptive or performance based standards, it only seeks to clarify existing standards and regulations. Alternative #3 is preferred for the reasons described above and the rationales for individual provisions serves as the explanation for why a standard, if required to be prescriptive, is prescriptive.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, the abovementioned alternatives were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific changes to clarify existing regulatory text and intent.



**FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))**

The fiscal and economic impact analysis for these Exemption Amendments relies upon contemplation, by the Board, of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development.

There will be no fiscal impact as the result of these changes. No public comment has been provided detailing concern regarding economic impacts during the multiple Professional Foresters Examination Committee meetings that included discussion of these changes.

The proposed action will not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

**DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))**

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations for the fees associated with licensing professional foresters and specialty certificates.